IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

CRL.A.No. 186 of 2004()

SC.813/2000 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CP.2/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, ATTINGAL
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APPELLANT:

SOMARAJAN @ SOMAN, S/O. KUNJAN,
C.NO. 7875, CENTRAL PRISON,
TRIVANDRUM-695012.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 3/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI,JJ.

CRL.A.No.186 of 2004

Dated this the 3rd day of August, 2007

JUDGMENT

Koshy,J

The appellant in this case was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/= for an offence punishable under Section 302 of the IPC. The prosecution case was that the accused on 26.7.1998 while taking tea in the shop of PW3 picked up quarrel with Gopi, father of PW10. When the deceased Maniyan @ Baby who was drinking tea in the shop, questioned the propriety of the accused making quarrel in the tea shop run by a woman, the accused became angry and saying that `I was looking for you', inflicted a blow with the chopper on the left side of the neck of the deceased. He died on the way to Medical College Hospital, Thiruvananthapuram. PW3 is the shop owner. She gave Ext.P2 F.I. statement. She deposed in terms of the prosecution story. She also stated that while the deceased was drinking tea inside the shop, the accused also came there asking for a glass of tea between 6-6.30 p.m. on 26.7.1998. According to PW3 the shop owner, the accused came to the tea shop and picked up quarrel with Gopi who was sitting in the tea shop. She asked both of them to go out of the shop. The accused pushed Gopi down into the canal running in front of the tea shop. The deceased who was drinking tea asked the accused whether it was proper to pick up quarrel in the shop run

by a woman. The accused, telling the deceased that he was waiting to get on him, inflicted a cut blow on the neck with MO4 chopper. The deceased fell down and the accused ran away. According to her, about six other people were inside the shop at the time of occurrence. They and those people assembled there, hearing a cry, took the deceased to the hospital. She gave F.I. statement to the police at 10.30 p.m. after receiving the news about the death at 8.30 p.m. PWs.7 and 8 also gave almost similar version.

2. PW6 is the brother of the deceased. He deposed that he heard cries from the place of occurrence and on reaching there the mother of PW3 told him that his brother sustained chopper wound and he found his brother lying down with a wound on the left side of his neck. Evidence of PWs.7 and 8 as well as PW10 the father of Gopi would show that they along with Gopi had previous enmity towards the accused. PW7 denied his 161 statement of the police regarding earlier threat of murder. But in the shop there were PWs.7,8 and Gopi on one side and the accused was on the other side. He also deposed that Gopi, PWs.7 and 8 came to the tea shop from far away place to the shop of PW3. But he denied the suggestion that it is to revenge on knowing that the accused used to come to take tea in the shop, usually on his way home after his work. PWs.7,8 and Gopi had some previous quarrel with the accused and that was the motive alleged by prosecution. PW10 deposed regarding the previous enmity to show the motive. According to the prosecution, about 3 months prior to the occurrence there was a quarrel between CW10 and the accused in which the deceased took sides

with CW10. PW10 deposed that he was asked by the accused to speak to another person who purchased a land from one of the relatives of the accused to pay brokerage money to the accused. As PW10 did not oblige, the accused got enraged and a quarrel occurred. Then the deceased intervened in that quarrel and advised him not to talk with the accused who was in a drunken state. PW11 another person of that locality deposed that on the day of occurrence at about 6 p.m. he had met the accused at Payattingakuzhy junction in a drunken state and that the accused told him that he would not permit Maniyan and CW10 to have their Onam lunch. The case set up by the defence also gives indications that Gopi was angry towards the accused for the latter picking up quarrel with his son PW10 Chandran.

3. MO4 alleged weapon of offence is vettukathi with blood stain and dirt as per the mahazar. But the Forensic Science Laboratory report (Ext.P10) shows that it had no blood stains. The version of the accused in 313 statement was that on the basis of the enmity between Gopi and his friends, Gopi stopped him in front of the tea shop and tried to inflict injury, at the time when he was returning from his work place with tools and some snacks for the children. When he was stopped by Gopi and others, from the hip of the accused, vettukathi was taken by Gopi and tried to inflict injury on him, but accidently it was fell on Maniyan, the deceased and Maniyan received fatal injury. It is also argued by the counsel for the accused that P8 scene mahazar as a whole, shows that there was evidence of quarrel and fight. Fire wood pieces, stones etc. were seen scattered in the shop, the alleged place

of occurrence.

4. The post mortem report shows the following injuries;

> 1) Incised wound 10X2.5X5.5 cm., oblique, on the left side and back of neck, the upper back end being 2 cm. to the right of midline (back) and 10 c.m. below occipital protuberance. The lower front end was 7 cm. to the left of midline (front) and 6 cm. below left angle of mandible. Muscles of left side of back of neck underneath were cleanly cut. The lamnia of 5th cervical vertebra underneath found cleanly cut and 3/4th of spinal cord underneath incised with infiltration of blood into surrounding tissues.
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> 2) Abrasion, 2X1 cm. on the front of right index finger, 3 cm. above its tip.
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> 3) Abrasion, 2 X 1.5 cm. on the outer aspect of right hip.

The FI report exhibits Ext.P4 report to show that the blood of the deceased contains 46 mg. of Ethyl Alcohol/100 ml. It is also deposed that PW3 the owner of the shop as well as PWs.7, 8 and 10 and Gopi belongs to same community whereas the accused belonging to a lower caste. Even if the evidence of prosecution is accepted as such, it can be seen that deceased and friends provoked quarrel with the accused. Quarrel between them had occurred much earlier also. Accused was on his usual way. In the circumstance, we are of the view that there is sufficient evidence to show that the deceased and friends who were having hostility towards the accused before the date of occurrence were waiting for the accused and the words uttered by the deceased, when accused came to the shop of PW3, as usual after his work at the time of occurrence gave a provocation to the accused for giving vent to his anger on a sudden fight followed. It is further

argued that even though the incident occurred at 6.30, the FI statement is stated to be given only at 10.30.After the incident PWs.7 and 8 stated that they were in the shop itself and they spent enough time to concote a story putting the guilt on the accused. In these circumstances, the learned counsel also submitted that present case was a fabricated one and he should be acquitted.

From the evidence adduced in this case, it is clear that there was quarrel between the accused on one side, Gopi the deceased etc. on another side. The accused who was a timber worker was having vettukathi as well as the picas with him, as he was coming from the work place. He placed the picas outside of the shop and Vettukahi (knife) was kept as usual in the hip. The deceased and PW7,8, Gopi father of PW10 were sitting in the shop, probably awaiting accused. They provoked him and a clash followed. The accused was alone on his side. There was previous enmity between them even according to the prosecution case. In the course of sudden fight, the injury was caused by the accused and the injury was sufficient in the ordinary course to cause death. At the same time, it cannot be stated that the injury was inflicted with an intention to cause death or with pre-planed intention, he was coming as usual after his work. There is only one cut injury which is happened to be at the vital organ and therefore we are of the opinion that the conviction can be under Section 304 part I and not under Section 300. Plea of right of private defence also cannot be discarded even though there is no such special plea.

In the above circumstances, we set aside the conviction and sentence under Section 300 and convert the conviction under Section 304. He is convicted and sentenced under Section 304 Part I for 7 years rigorous imprisonment and to pay a fine of Rs.10,000/=. If the fine is realised, Rs.7000/= should be given to the wife of the deceased Maniyan. In default of payment of fine the accused shall undergo further six months imprisonment. He is entitled to the right of set off.

The appeal is allowed in part.

J.B.KOSHY, JUDGE

V.GIRI,JUDGE

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J.B.KOSHY, J.

&
V.GIRI, J.

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JUDGMENT

3.8.2007